IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revn.No. 457 of 1996
Date of Decision: November 13, 2007

Suresh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

Coram: Hon'ble Mr. Justice Harbans Lal

Present: Mr.H.N.Mehtani, Advocate
for the petitioner.

Mr. A.K.Rathee, Assistant Advocate General, Haryana

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Harbans Lal, J.

This revision is directed against the judgment/order dated 8/9.1.1996 vide which the Court of learned Chief Judicial Magistrate, Kurukshetra convicted and sentenced the petitioner to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- or in its default to undergo further rigorous imprisonment for a period of one month under Section 7 punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') as well as the judgment dated 12.7.1996 rendered by the Court of learned Additional Sessions Judge, Kurukshetra vide which he dismissed the appeal.

The facts in brief of the prosecution case are that on 17.3.1989 at 2.30 P.M. Sh.J.S.Chauhan, Government Food Inspector alongwith Dr.T.R.Girdhar and one independent witness Kanwar Dilbag Singh

inspected the premises of accused. The accused was found having 3 Kg. butter in 42 plastic packets for public sale. The Food Inspector, after disclosing his identity demanded the sample of butter by giving him a notice Ex.PA on Form-VII prescribed under the Prevention of Food Adulteration Rules, 1955. 450 grams butter was purchased, after mixing the whole contents properly and making the same uniform for analysis from the accused after making payment of Rs.21.80 paise against proper receipt Ex.PB. Thereafter, the butter was divided into three equal parts and put into three dry and clean empty bottles. Two drops of 40% formalin per 25 mls/gms. was added as preservative in each bottle. The bottles/packets were stoppered tightly and sealed on the neck with the seal of Medical Officer Dr.T.R.Girdhar. Bottles were labelled and wrapped in strong thick paper. Ends of the paper were pasted with gum. A paper slip bearing Code No. KRD4(H) and signatures of Local Health Authority, Kurukshetra was pasted on each bottle/packet from top to bottom. Each bottle was secured by means of strong twine and sealed the same with the seal of the Medical Officer and Food Inspector at the spot. Signatures of Suresh Kumar accused were obtained in such a manner that both the paper slip and the wrapper on each sealed bottle alongwith memorandum in Form-VII was sent to the Public Analyst, Haryana, Chandigarh on 17.3.1989 for analysis, in a sealed packet through railway parcel. The other two sealed bottles of the sample alongwith two copies of memo in Form-VII were deposited with the Local Health Authority, Kurukshetra on the same day i.e.17.3.1989. A copy of memorandum in Form-VII and a specimen impression of seals used to seal the sample and packet box were sent to the Public Analyst, Haryana,

Chandigarh separately by registered post vide office receipt No.1729 dated 18.3.1989. The Public Analyst, Haryana, Chandigarh after analysing the sample sent his report Ex.PD to the Local Health authority. As per report Ex.PD the sample contains milk fat 76.6% and Curd 3.4% against the minimum and maximum prescribed standards of 80% and 1.5% respectively. The sample was not upto the prescribed standards. As such, prosecution was launched against the accused.

The learned trial Magistrate after recording the prosecution evidence and statement of the accused under Section 313 Cr.P.C. and after hearing the learned Government Food Inspector for the State and the learned defence counsel, convicted and sentenced the petitioner as noticed at the outset. Feeling aggrieved with the judgment/order dated 8/9.1.1996, the petitioner preferred an appeal, which was also dismissed by the learned Additional Sessions Judge, Kurukshetra.

I have heard the learned counsel for the parties and perused the record carefully.

Mr. H.N.Mehtani, Advocate appearing on behalf of the petitioner strenuously urged that as follows from the Public Analyst's report Ex.PD, fat contents in the butter were 76.6% and moisture contents were 3.4% whereas according to the report of the Director, Central Food Laboratory Ex.PZ, the fat contents of the butter were found 71.4% and moisture contents were 2.2%. He further puts that Dr.G.S.Rajoria, Principal, Scientist, Diary Technology, National Diary Research Institute, Karnal DW1 has solemnly affirmed that if some sample is analyzed by two Analysts, the variation in fact contents do not exceed + - .0.1% and if the

variation is more than 0.1% then it has tobe inferred that two counter parts of the sample are not the representative of each other and this evidence leave no scope for doubt that as a matter of fact the counter parts of the sample were not the representative of each other and consequently, the Courts below were not justified to record conviction.

As against this, Mr. A.K.Rathee, Assistant Advocate General, Haryana maintained that the opinion given by Dr.G.S.Rajoria is unwarranted by the Act and sequelly, the same ought to be excluded from consideration. The contention raised by Mr. Mehtani is unsustainable. Under the stress of cross-examination, Dr.G.S.Rajoria DW1 has admitted that there is no mention in the Act that in case the samples are analyzed by two different Analysts then variation will be not more than + - 0.1%. There being no such provision in the Act, the contention raised by Mr. Mehtani is over-rulled.

The next argument raised by Mr. Mehtani is that as emanates from the testimony of Kanwar Dilbag Singh DW2, the butter was kept in Patila for preparing Ghee and further more Dr.T.R.Girdhar PW1 has also testified that the butter was not for sale and was in the process of preparation of Ghee and this evidence nullifies the prosecution case for the reason, unless it is established that the food item was meant for sale, no offence is made out under the Act.

To controvert this submission, Mr. Rathee contended that if the butter in question had not been put for sale, why the petitioner sold it to the Food Inspector. This contention finds favour with me. J.S.Chauhan PW, Government Food Inspector has stated in so many words that by serving

notice Ex.PA, he purchased 450 gms. of butter vide receipt Ex.PB from the petitioner. If the butter was not kept for sale, the petitioner should have refused to sell the same to this witness. So, this contention being bereft of any merit, is also turned down.

Last of all, Mr. Mehtani submitted that in view of the observations made in re: **Harbans Lal vs. State of Haryana**, 2001(2) Recent Criminal Reports(Criminal), 333 (P&H), this incident being more than 18 years old, the sentence inflicted upon the petitioner may be reduced to already undergone. I have given a deep and thoughtful consideration to this submission.

In re:**Sita Ram vs. State** 2004(1) Recent Criminal Reports (Criminal), 924 (Delhi), the accused faced trial for 18 years, his sentence was reduced to already undergone by the Delhi High Court. Reference may also be made to the observations rendered in re: **Mahavir vs. State through Govt. Food Inspector,** 2000(4) Recent Criminal Reports (Criminal) 208, **Ganesh Maity vs. U.T.Chandigarh**, 2003(1) Recent Criminal Reports (Criminal)418, **Suraj Bhan vs. State of Haryana**, 2003 Recent Criminal Reports (Criminal) 332, **Sher Singh vs. State of U.T. Chandigarh,** 2003(2) Recent Criminal Reports (Criminal) 826.

There is no denying the fact that the incident is more than 18 years old. Thus, obviously the petitioner has faced the agony of trial for a pretty long time. He has suffered both financial and mental agony on account of prolonged litigation. In my estimation, the ends of justice would be sufficiently met if while maintaining the conviction, the sentence imposed upon the petitioner is reduced to the period already undergone and

the amount of fine is enhanced to Rs.5000/- and in its default to further undergo rigorous imprisonment for three months. With such modification in sentence, this revision petition is disposed of.

November 13, 2007 **(HARBANS LAL)**
gsv **JUDGE**

Whether to be referred to the Reporter? Yes/No